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Office Supreme Court

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JAMES C. H.

Supreme Court of the United States

OCTOBER TERM, 1914

No. 110

SIMON LESSER,

Plaintiff in Error

vs.

JAMES R. GRAY,

Defendant in Error

MOTION TO DISMISS WRIT OF ERROR

ALEX. C. KING,

CHAS. T. HOPKINS,

Counsel for Defendant in Error

MOTION TO DISMISS THE WRIT OF ERROR.

And now comes James R. Gray, defendant in error in the above entitled cause, by Charles T. Hopkins and Alex. C. King, his counsel appearing in that behalf, and moves the Court to dismiss the writ of error in the above entitled cause for want of jurisdiction upon the following grounds:

I.

This writ of error is a writ of error taken to the Court of Appeals of the State of Georgia to reverse a decision of that Court upon the ground that the plaintiff in the Court of Appeals, who is plaintiff in error in this writ, specially set up and claimed a title, right, privilege and exemption under the Statutes of the United States relating to bankruptcy, to-wit: The Act approved July 1, 1898, and the subsequent Acts amendatory thereof, and claimed that his debt having been disallowed and adjudicated by the bankruptcy court to be not provable in bankruptcy against the assets of the bankrupt, the proceedings in bankruptcy and the discharge of the defendants were no bar to the prosecution of his suit and that the plea of bankruptcy was not available to the defendants, which claim was expressly overruled and denied by the final judgment of the Court of Appeals of Georgia aforesaid, and which said judgment was a decision against the right, title, privilege and exemption especially set up and claimed as aforesaid

by the plaintiff in error under said Statutes of the United States.

The record in this case affirmatively shows that no decision has been made in the case against any title, right, privilege or immunity set up or claimed by either party thereto under the Constitution, Treaties, Statutes, Commission or Authorities of the United States.

The record shows upon its face that the same is a suit brought by the plaintiff claiming the right to recover anticipatory damages upon an executory contract and that the plaintiff insisted that his right to recover was the same as it had been prior to the institution of the proceedings in involuntary bankruptcy against the defendant recited by the plaintiff in his petition and that his rights of action under the common law and Statutes of Georgia were not affected by such bankruptcy proceedings. The defendant by his demurrer asserted the claim that, by reason of said involuntary proceedings in bankruptcy, the partnership of which he was a member, and against which said claim was alleged to exist, had been dissolved and the contract sued on had been terminated and all right to recover the damages sued for destroyed and the decision of the State Court was in favor of the claim and right thus set up in favor of the defendant.

This movant shows that this Court hath jurisdiction of the writ of error to the said Court of Appeals of Georgia only in case where its decision is against the title,

privilege, right or immunity set up or claimed under the said Constitution, Treaties, Statutes, Commission or authorities of the United States of America and that therefore this Honorable Supreme Court is without jurisdiction to entertain the writ of error in this case.

II.

Your movement further shows that it appears from the record in this case that the decision of the Court of Appeals was not based upon any construction of the Statutes of the United States relating to bankruptcy, nor did the same involve a federal question, which was decided adversely to the claim of the plaintiff in error therein.

III.

That the decision of the Court below sustained a general demurrer on the ground that the petition set forth no cause of action, nor any facts which give the plaintiff any legal rights against the defendant, together with other grounds of demurrer not involving any question under the Bankruptcy Act, or any other Statute of the United States, or any part of the Constitution of the United States, which demurrer was sustained generally and the case dismissed as to the movant, James R. Gray.

That the decision of the Court of Appeals, while discussing only one ground of the demurrer does not overrule or disallow the other grounds of demurrer, and the reversal of the Court of Appeals as to the ground

which said Court has discussed in this decision would, under the practice and procedure in Georgia leave the judgment of the trial Court affirmed on all other grounds of demurrer, so that the judgment of the Court of Appeals is sustainable upon grounds other than the alleged federal question.

For which said several reasons James R. Gray, by his counsel, moves that this writ of error be dismissed for want of jurisdiction.

ALEX. C. KING, .

CHAS. T. HOPKINS,

Counsel for Defendant in Error, Appearing for the Purposes of this Motion.

FILED

OCT 25 1934

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WEST

IN SENATE

COMMITTEE ON

EDUCATION

AND LABOR

HEARINGS

ON

THE PROPOSED REVISION OF THE FEDERAL

PROSECUTION ACT

AND THE PROPOSED REVISION OF THE FEDERAL

CRIMINAL CODE

AND THE PROPOSED REVISION OF THE FEDERAL

WILLIAM C. HING

CHAS. C. HOPKINS

Chairman and Counsel to Senate

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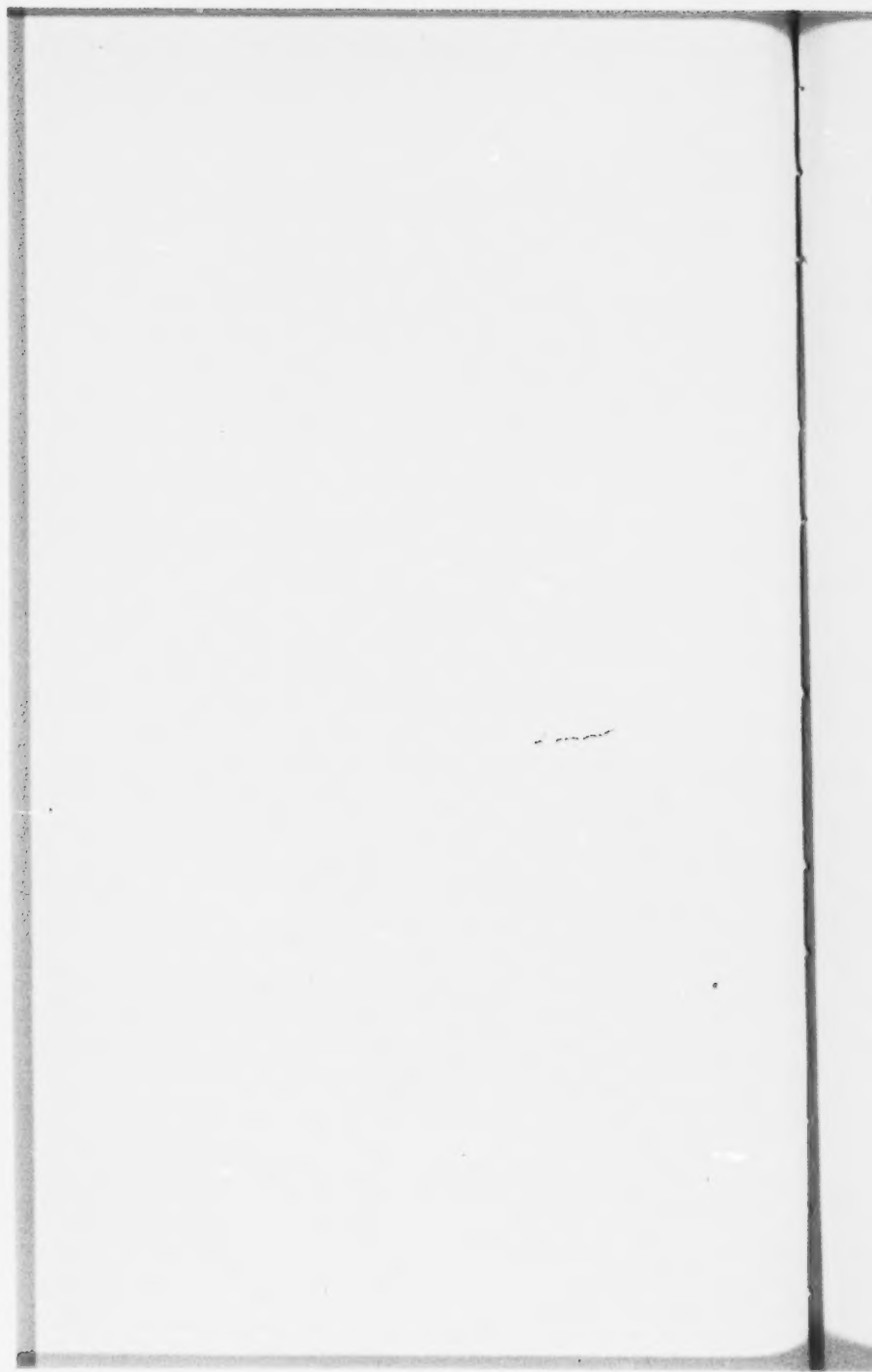
To Mr. Henry A. Alexander,
Counsel for Plaintiff in Error:

Please take notice that on Monday, the 16th day of November, 1914, at the opening of said Supreme Court, or so soon thereafter as counsel can be heard, the motion to dismiss in the above stated case, a copy of which is herewith delivered to you, will be submitted to the Supreme Court of the United States for the decision of the Court.

Accompanying this notice is a copy of the brief of argument to be submitted with said motion in support thereof.

This October 23rd, 1914.

ALEX. C. KING,
CHAS. T. HOPKINS,
Counsel for Defendant in Error, appearing for the purposes of this motion.



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Due and legal service is acknowledged of a copy of the motion to dismiss in the above stated case.

Also of notice that said motion will be presented to the Honorable Supreme Court of the United States on the 16th day of November, 1914.

Also of the brief of the Defendant in Error upon the motion to dismiss.

This October 23rd, 1914.

HENRY A. ALEXANDER,
Counsel for Simon Lesser,
Plaintiff in Error.